Devi La l & Ors. vs. Daya Lal & Ors.

1. SB Civil Regular 1st Appeal No.61/1988

Jannat Bai & Ors. vs. Moti Lal & Ors.

2. S.B.Civil Regular First Appeal No.236/2000

Moti Lal & Ors. vs. Jannat Bai & Ors.

3. S.B.Civil Cross Objection No.06/2001.

Date of Judgment : 16th March, 2007

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Rameshwar Chauhan for the appellants in appeal No.61/1988.
Mr.Shanker Lal for the appellants in appeal No.236/2000.
Mr.Manish Shishodia & Mr.M.Aslam for respondents in appeal No.06/2001 and also for cross objectors.

Heard learned counsel for the parties.

In both these appeals the property in question and parties to the suit are same, therefore, both these appeals being No.61/1988 and No.236/2000 are decided by this common judgment.

Brief facts of the case are that the plaintiff/appellant Devi

Lal (in appeal No.61/1988) filed a suit for redemption of mortgage and partition in respect of the property in question stating therein that the suit property was mortgaged by Devi Lal and Daya Lal (both brothers) to Abdul Shakoor for a consideration of Rs.6,000/- and after expiry of mortgage period, Devi Lal filed the suit and the same was decreed by the learned trail court on 14.01.1988 and passed decree for redemption of mortgage property and also preliminary decree for partition of the same property and directed Devi Lal to pay the whole mortgage amount to the mortgagee only on the ground that Devi Lal filed the suit, therefore, he is liable to pay whole amount of mortgage and expenses occurred by mortgagee on the suit property.

The plaintiff appellant Devi Lal filed a regular first appeal against the judgment and decree of the learned trial court dated 14.01.88 before this Court and challenged the part of the decree that he is not liable to pay whole amount of redemption of mortgage because both the brothers Devi Lal and Daya Lal mortgaged the property.

After passing of the judgment and decree dated 14.01.88 the legal representative of Daya Lal sold out half of the portion situated in Western side of the disputed property to Jannat Bai for a

consideration of Rs.1,05,000/- by registered sale deed dated 20.11.1992 and, thereafter, the legal representatives of Devi Lal (Moti Lal and others) filed a suit for pre-emption against Jannat Bai and others and that was decreed by the learned trial court vide judgment and decree dated 06.09.2000.

Against the judgment and decree dated 06.09.2000, the appellant Jannat Bai and others filed an appeal being Appeal No.236/2000 before this Court and the plaintiff respondent Moti Lal also filed cross objection before this Court being No.6/2001.

Learned counsel Mr.Rameshwar Chauan vehemently submitted that the disputed property was mortgaged by both the brothers (Devi Lal and Daya Lal), hence Devi Lal is not liable to pay whole amount of redemption of mortgage to the mortgagee.

It is admitted position that the suit property was mortgaged by Devi Lal and Daya Lal. The findings of the learned trail court, while deciding civil suit No.42/1986, that the suit was filed by Devi Lal and , therefore, he is liable to pay whole amount of redemption, is liable to be quashed and set aside only to the extent that the plaintiff appellant is liable to pay whole amount of

redemption of mortgage and the judgment and decree dated 14.01.1988 is modified that both the brothers are equally liable to pay the consideration of redemption of mortgage to mortgagee.

In the result of the above discussion, appeal No.61/ 1988 is allowed.

Learned counsel Mr.Shanker Lal vehemently submitted thatthe judgment and decree dated 06.09.2000 passed by the learned trial court is against the facts and law. It was contended that the suit filed by the plaintiff respondent is not maintainable because the plaintiff respondent specifically averred in the plaint that the sale deed dated 20.11.92, executed in favour of appellant, is null and void, therefore, suit for cancellation of sale deed should be filed. It was further contended that one Shri Amrit Lal, who is near relative of the plaintiff, was present at the time of execution of the sale deed dated 20.11.92, therefore, there was no need to give notice under Section 8 of the Rajathan Pre-emption Act. Therefore, the judgment and decree passed by the learned trial court are vitiated by error of law as well as fact and are liable to be quashed and set aside.

It is admitted position that Devi Lal and Daya Lal were

joint owners of the property in question and Daya Lal without partition and defining his share, sold out the Western side (half of the portion of the suit property) to the appellant, without giving any notice to Devi Lal. It is also admitted position that Devi Lal and Daya Lal are co-parceners of the disputed property. Thus, Devi La had right to purchase the disputed property under the Rajasthan Pre-emption Act. It is further admitted position that the judgment and decree dated 14.01.88, passed by the learned trial court, has not been challenged by Daya Lal and also mortgagee. Therefore, the judgment and decree passed by the learned trial court dated 14.01.88 has become final.

In the result of the above discussion, the appeal of appellant Jannat Bai and others, having no force, is hereby dismissed.

Learned counsel for the respondents -cross objectors contended that the learned trial court has committed serious error of law in passing the judgment and decree dated 06.09.2000 to the extent that the purchaser -appellants shall execute a fresh sale deed in favour of cross objectors. It was contended that according to Order 20 Rule 14 CPC no fresh sale deed is required to be executed by the purchasers in favour of the pre-emptor. Only the name of the

appellants pre-emptors shall be substituted in the sale deed in place of the purchasers appellants.

I have considered the rival submissions and perused the record of the aside.

It is right that in the suit for pre-emption where decree is passed in favour of the plaintiff, then only name of the plaintiff pre-emptor will be substituted in place of the name of the purchaser, as provided in Order 20 Rule 14 CPC. Therefore, the judgment and decree dated 06.09.2000 is also modified to the extent that the purchasers appellants shall not execute a fresh sale deed but the name of the plaintiff pre-emptors shall be substituted in place of the name of purchaser appellants.

In view of the above discussion, the cross objection filed by the plaintiff respondents is allowed.

(BHAGWATI PRASAD), J.

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